

## **cw-CS9 Planning Proposal to Amend WLEP 2010 to permit the Short Term Letting of Residential Dwellings for Tourist and Visitor Accommodation.**

**Reference:** 5901  
**Responsible Officer:** Group Manager Strategic and Assets

### **PURPOSE**

The purpose of this report is to advise Council of the options available for the management of the short term letting of residential dwellings for tourist and visitor accommodation. It is recommended that a Planning Proposal be prepared to amend Wingecarribee Local Environmental Plan 2010 (WLEP 2010) to insert a clause permitting the short term letting of residential dwellings for tourist and visitor accommodation as a form of exempt development.

### **DESCRIPTION OF PROPOSAL**

#### **BACKGROUND**

WLEP 2010 makes the distinction between 'Residential Accommodation' and 'Tourist and Visitor Accommodation'. Residential Accommodation is defined under WLEP 2010 to mean: "a building or place used predominantly as a place of residence, and includes any of the following: (a) attached dwellings, (b) boarding houses, (c) dual occupancies, (d) dwelling houses, (e) group homes, (f) hostels, (g) multi dwelling housing, (h) residential flat buildings, (i) rural workers' dwellings, (j) secondary dwellings, (k) semi-detached dwellings, (l) seniors housing, (m) shop top housing, but does not include tourist and visitor accommodation or caravan parks."

It is noted that dwelling houses are a form of residential accommodation. Dwelling houses are defined under WLEP 2010 to mean: "a building containing only one dwelling", and a Dwelling means: "a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile".

Tourist and Visitor Accommodation is defined under WLEP 2010 to mean: "a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following: (a) backpackers' accommodation, (b) bed and breakfast accommodation, (c) farm stay accommodation, (d) hotel or motel accommodation, or (e) serviced apartments."

Serviced apartments are defined to mean: "a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner's or manager's agents."

Therefore, as inappropriate as the term may seem to residential dwellings in Wingecarribee Shire, if those dwellings are let out for short term tourist and visitor accommodation, rather than being used for long term owner occupation or residential lease, they cease to be a 'dwelling house' and becomes a 'serviced apartment'.

## **PLANNING CONSIDERATIONS**

Serviced apartments are permitted with consent in only two residential zones - R2 Low Density Residential and R3 Medium Density Residential. Such development is prohibited in the R5 Large Lot Residential zone as well as the E3 Environmental Management zone.

Residential dwellings being used for short term tourist and visitor accommodation, where that use commenced before 16 June 2010 (the date WLEP 2010 came into force), are not in breach of WLEP 2010 because such activity was not regulated under WLEP 1989.

However, residential dwellings being used for short term tourist and visitor accommodation, where that use commenced after 16 June 2010 and no consent has been obtained from Council for the use of the dwelling as a 'serviced apartment', are in breach of WLEP 2010.

In the R2 Low Density Residential and R3 Medium Density Residential zones, where 'serviced apartments' are permitted with consent, a valid approval could be sought. However, in the R5 Large Lot Residential and E3 Environmental Management zones, where 'serviced apartments' are prohibited under WLEP 2010, those owners who let out their dwellings for short term tourist and visitor accommodation would need to apply for permission under clause 2.8 of WLEP which makes provision for the temporary use of land.

Council has sought direction from the NSW Department of Planning and Infrastructure (DP&I) as to whether there is any intention to amend the Standard Instrument to address this issue, but it appears that there is none at this stage.

There are two alternatives to address this situation. One is to enforce the current controls. The other is to circumvent the current controls through an amendment to WLEP 2010. Each is considered in turn.

### **Enforce the current controls**

In order to enforce the current controls Council needs to firstly identify those dwellings which are being let out for short term tourist and visitor accommodation where that operation commenced after 16 June 2010. It is unlikely that Council could ever be confident that all, or even most, properties had been identified.

Identified properties would be required to lodge a Land Use Application (LUA) where they are operating in zones that permit 'serviced apartments' with consent. Those properties identified in those zones which do not permit serviced apartments would need to be issued with notices to cease that activity. Again compliance would be difficult to enforce. This approach would probably result in considerable Council effort for very little effect.

### **Amend WLEP 2010 to facilitate short term rentals**

Council recognises the valuable contribution that this form of tourist and visitor accommodation makes to the tourist base of the Shire and is aware that some 200 properties currently offer this form of accommodation.

In the absence of any current intention by the DP&I to amend the Standard Instrument to make provision for such a land use, Council can seek to resolve the situation by amending its own WLEP 2010 to insert a Local Clause which exempts such short term letting from requiring development consent. The following Local Clause is proposed:

### ***Short-term rental accommodation [local]***

*(1) The objective of this clause is to enable the temporary use of dwellings as short-term rental accommodation for tourists and visitors without requiring development consent.*

*(2) Despite any other provision of this plan, development consent is not required for the use of a dwelling as short-term rental accommodation for visitors (except bed and breakfast accommodation).*

*(3) In this clause 'short-term tourist and visitor accommodation' is tourist and visitor accommodation that is used for a maximum period of 45 consecutive days in any 12 month period per individual or group.*

This clause would permit the use of residential dwellings for short term tourist and visitor accommodation in all zones across the Shire without the need for Council approval.

It is noted that a Planning Proposal would be required to amend WLEP 2010 to insert this local clause and the average time frame for a Planning Proposal is 12 months. Therefore, in the interim, the owners of residential dwellings used for short term tourist and visitor accommodation would be invited to apply for Council approval under clause 2.8 of WLEP regarding the Temporary Use of Land, as reproduced below:

#### **2.8 Temporary use of land**

- (1) The objective of this clause is to provide for the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.
- (2) Despite any other provision of this Plan, development consent may be granted for development on land in any zone for a temporary use for a maximum period of 60 days (whether or not consecutive days) in any period of 12 months.
- (3) Development consent must not be granted unless the consent authority is satisfied that:
  - (a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and
  - (b) the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and
  - (c) the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and
  - (d) at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.
- (4) Despite subclause (2), the temporary use of a dwelling as a sales office for a new release area or a new housing estate may exceed the maximum number of days specified in that subclause.

- (5) Subclause (3) (d) does not apply to the temporary use of a dwelling as a sales office mentioned in subclause (4).

## **CONCLUSION**

The report identifies a solution which facilitates rather than hinders the use of residential dwellings for short term tourist and visitor accommodation. This approach recognises the significant contribution that such accommodation makes to the tourist economy of the Southern Highlands and the limitations of enforcing consents and controls. It is expected that the owners of such properties are sufficiently concerned for the ongoing condition of the property and viability of their enterprise to ensure that tenants treat the property, and the neighbours, with respect.

No property owner can be fully confident of the behavior of their tenants, however, it can be expected that the Southern Highlands is unlikely to attract the types of groups more commonly known for anti-social behavior. The owner's economic imperative of keeping the property on the market and minimising damage should be sufficient to ensure that this type of tourist and visitor accommodation can successfully operate, from a planning perspective, as a form of exempt development.

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## **STATUTORY PROVISIONS**

### **Wingecarribee LEP2010 (WLEP 2010)**

A Planning Proposal would be required to amend WLEP 2010 to insert the proposed local clause under the Gateway process introduced in July 2009. The gateway process has the following steps:

**Planning Proposal** - the relevant planning authority (Council) is responsible for the preparation of a planning proposal, which explains the effect of and justification for the plan. If initiated by the Minister (rather than the local council which is mostly the case) the Minister can appoint the Director-General of the Department of Planning or a joint regional planning panel to be the relevant planning authority.

**Gateway** - The Minister (or delegate) determines whether the planning proposal is to proceed. This gateway acts as a checkpoint to ensure that the proposal is justified before further studies are done and resources are allocated to the preparation of a plan. A community consultation process is also determined at this time. Consultations occur with relevant public authorities and, if necessary, the proposal is varied.

**Community Consultation** - the proposal is publicly exhibited (generally low impact proposals for 14 days, others for 28 days). A person making a submission may also request a public hearing be held.

**Assessment** - The relevant planning authority (Council) considers public submissions and the Proposal is varied as necessary. It is noted that clause 58 of the EP&A Act allows Council to vary, at any time, its Proposal as a consequence of its consideration of any submission or report during community consultation or for any other reason. Council may also resolve to not proceed with the Planning Proposal under this clause.

If the Planning Proposal does proceed, Parliamentary Counsel then prepares a draft local

environmental plan (the legal instrument).

**Decision** - With the Minister's (or delegate's) approval the plan becomes law and is published on the NSW Legislation website.

### **Development Control Plans (DCPs)**

Because it is proposed that such development would be exempt under WLEP 2010, no additional DCP controls would be required.

### **State Environmental Planning Policies (SEPPs)**

State Environmental Planning Policies (SEPPs) are a set of Environmental Planning Instruments with which Council must comply, where relevant, when considering amendments to WLEP 2010. These matters will be addressed in preparing the Planning Proposal should Council resolve to proceed.

### **Section 117 Directions**

The Minister for Planning, under section 117(2) of the Environmental Planning and Assessment Act 1979 (EP&A Act) issues Directions that Council must follow when preparing Planning Proposals. The Directions cover the following broad categories:

1. employment and resources
2. environment and heritage
3. housing, infrastructure and urban development
4. hazard and risk
5. regional planning
6. local plan making.

These matters will be addressed in preparing the Planning Proposal should Council resolve to proceed.

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## **CONSULTATION**

### **External Referrals**

The Gateway Determination will advise which public authorities are to be consulted as part of the Planning Proposal process.

### **Internal Referrals**

Should Council resolve to proceed with a Planning Proposal, relevant branches within Council will be advised and responses sought.

### **Community Consultation**

The Gateway Determination will advise what public participation will be required as part of the Planning Proposal process.

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## **SUSTAINABILITY ASSESSMENT**

- **Environment**

Environmental considerations are addressed at the time of considering a Land Use Application (LUA) for the original dwelling house. It is not considered that short term rental of that house for tourist and visitor accommodation would adversely impact on the environmental requirements of the original consent.

- **Social**

The short term rental of housing for tourist and visitor accommodation may impact on the surrounding residential or rural amenity if tenants behave badly and cause neighbourhood disruption. It is the responsibility of the property owner to manage this and becomes a Police matter if they do not.

- **Broader Economic Implications**

The short term rental of housing provides a form of for tourist and visitor accommodation which meets a market need and generates additional economic benefit to the Shire.

- **Culture**

There are no significant cultural implications.

- **Governance**

The current provisions of WLEP 2010 require development consent for the short term rental of housing for tourist and visitor accommodation. Only certain zones permit such activity. The inclusion of the proposed clause enables current properties to operate within the legal requirements of the LEP. Until WLEP 2010 is amended, property owners may apply for permission under clause 2.8 of WLEP as a 'temporary use of land'.

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## **RELATIONSHIP TO CORPORATE PLANS**

Goal 5.2 of the 2031+ Wingecarribee Community Strategic Plan is to develop The Southern Highlands as a recognised tourist destination throughout Australia. The provision of a range of accommodation options is an integral part of the achievement of that goal.

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## **BUDGET IMPLICATIONS**

There are no budget implications. Should Council resolve to proceed with the Planning Proposal it would be undertaken by Council staff.

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## **RELATED COUNCIL POLICY**

There are no additional Council Policy implications beyond those addressed in this report.

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## **OPTIONS**

There are three (3) options:

**Option 1** Do Nothing.

This option would leave many property owners in breach of the provisions of WLEP 2010 without any mechanism for addressing the problem.

**Option 2** Actively enforce the current provisions of WLEP 2010.

This option requires Council to develop a process to identify residential properties which have commenced operation as short term tourist and visitor accommodation since 16 June 2010, require Land Use Applications from those property owners and then assess these applications. Council currently does not have the resources to undertake such an approach and nor it is likely that such an approach will be effective in identifying and rectifying the problem. Similarly, those properties located within zones which prohibit serviced apartments would need to be identified and advised to cease operation.

**Option 3** Amend WLEP 2010 as outlined in this report.

This option allows existing properties to continue their practice of use for tourist and visitor accommodation without Council involvement.

Option 3 is preferred.

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**ATTACHMENTS**

There are no attachments to this report.

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**RECOMMENDATION**

1. **THAT** Council resolve to prepare a Planning Proposal under section 55 of the Environmental Planning & Assessment Act 1979, to insert into WLEP 2010 the following Local Clause:

***Short-term rental accommodation [local]***

*(1) The objective of this clause is to enable the temporary use of dwellings as short-term rental accommodation for tourists and visitors without requiring development consent.*

*(2) Despite any other provision of this plan, development consent is not required for the use of a dwelling as short-term rental accommodation for visitors (except bed and breakfast accommodation).*

*(3) In this clause 'short-term tourist and visitor accommodation' is tourist and visitor accommodation that is used for a maximum period of 45 consecutive days in any 12 month period per individual or group.*

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***(Voting on the Motion)***